

1 NICHOLAS A. TRUTANICH
United States Attorney
2 District of Nevada
Nevada Bar No. 13644

4 BRIAN IRVIN
5 Assistant United States Attorney
6 501 Las Vegas Blvd. So., Suite 1100
7 Las Vegas, Nevada 89101
8 (702) 388-6336
9 Brian.Irvin@usdoj.gov

7 | Attorneys for the United States

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Thanh Q. Dam and Ha Thu Ta,

11 v. Plaintiffs,

12 William Barr, Attorney General,
13 Department of Justice, Kevin Maleenan,
14 Acting Secretary for the Department of
15 Homeland Security; Kenneth T. Cuccinelli
16 II, Acting Director, Citizen and Immigration
17 Services; Al Gallmann, District Director for
the Phoenix Citizenship and Immigration
Services; Jeanne M. Kent, Filed Office
Direct, Las Vegas Citizenship and
Immigration Services (collectively “Federal
Defendants”);
Defendants.

Case No. 2:19-cv-01701-GMN-HJK
**ORDER GRANTING
Joint Motion to Establish Briefing
Schedule**

Pursuant to Local Rule 16-1(c)(1), Plaintiffs and the Federal Defendants jointly move for entry of an order establishing a Briefing Schedule. In support of the motion, Plaintiffs and Federal Defendant submit the following:

22 1. Plaintiffs challenge the denial of an application for citizenship under the
23 Administrative Procedure Act, 5 U.S.C. §§ 701-706.

24 2. This case has a complex procedural history. The parties agree that following is not a
25 complete history, that there are potential legal issues that are not being addressed in this procedural
26 motion, and that Defendants do not admit any fact that has been previously denied in

1 their answer. Neither party waives factual or legal grounds for argument at this juncture for having
2 been omitted from this motion:

- 3 a. Ha Thu Ta, a Vietnam citizen, married Thanh Quang Dam (“Dam”), a United
4 States citizen.
- 5 b. On February 10, 2015, Dam filed Form I-130, Family Based Petition for Alien
6 Relative, on Ta’s behalf, and Ta concomitantly filed Form I-485, Application to
7 Adjust to Permanent Resident Status, the approval of which required the
8 approval of the Family Petition. The Family Petition was denied, and thus, so
9 too was the Application to Adjust Status. On July 21, 2016, Plaintiffs filed a
10 second Form I-130 Petition and Form I-485 Application.
- 11 c. Ta was then placed into removal proceedings and charged with marriage fraud.
12 Prior counsel conceded these charges of marriage fraud without Ta’s consent
13 then sought to continue removal proceedings pending the adjudication of Dam’s
14 second petition and Ta’s second application to adjust status. The Immigration
15 Judge, (“IJ”), entered this concession of marriage fraud onto the record,
16 sustained charges of marriage fraud, and denied a continuance, premised upon
17 INA § 204(c), which forbids the approval of a second Form I-130 or any other
18 Immigrant Petition after a finding of marriage fraud. Plaintiff was then ordered
19 removed by the IJ.
- 20 d. Plaintiffs appealed the IJ’s decision with the Board of Immigration Appeals,
21 (“Board”), by representation of her undersigned Counsel, alleging prior counsel’s
22 error was ineffective and reversible. Her Form I-485 was administratively closed
23 by the US Citizenship and Immigration Services, (USCIS) of the Department of
24 Homeland Security. Then after, her appeal of the IJ’s decision was denied by the
25 Board. Plaintiff filed a Petition for review before the Ninth Circuit Court of
26 Appeals.

1 e. Plaintiffs second Form I-130 Petition was approved. Based upon this approved
2 petition, on Plaintiff's motion, the Board reopened and remanded her case to the
3 IJ. By joint petition of Plaintiff and the Office of Litigation Counsel, the Ninth
4 Circuit dismissed Ta's Petition for Review without prejudice.

5 f. However, USCIS subsequently revoked the Form I-130 Petition. Plaintiffs
6 appealed to the Board of Immigration Appeals. Then after, the IJ terminated
7 removal proceedings holding that the Department of Homeland Security had not
8 sustained charges of fraud, despite having opportunity to do so. On August 8,
9 2019, the Board dismissed Dam's appeal of USCIS' decision to revoke the
10 petition.

11 3. Dam and Ta subsequently filed the instant action, challenging the denial of the first
12 Form I-130, the revocation of the second Form I-130, and the Board's affirmance of that
13 revocation. Plaintiffs request that this court find that the foregoing agency decisions were arbitrary,
14 capricious, an abuse of discretion, or otherwise contrary to law.

15 4. The parties agree that the scope of the Court's review of that decision is governed by
16 5 U.S.C. §§ 701-706, that no discovery is required in this action, and that it may proceed on a
17 review of the administrative record.

18 Accordingly, the parties request that the Court enter an order setting the following
19 deadlines¹:

20 1. Within sixty (60) days after entry of this order Federal Defendant shall file with the
21 Court, one copy of the administrative record of the decision at issue in this matter. Federal
22 Defendant will also provide one copy of the administrative record to Plaintiffs.
23

24 ¹ The parties are requesting 60 days because the administrative file is highly voluminous. The
25 records department at USCIS is currently operating on a skeletal crew due to the coronavirus, and
26 upon information and belief, producing a certified copy of a record as large as this file is beyond
their capabilities.

1 2. Within thirty (30) days of the filing of the administrative record, the parties shall file
2 their respective motion for summary judgment briefs.

3 3. Within thirty (30) days of the filing of the initial briefs, the parties shall file their
4 respective briefs in opposition.

5 4. The parties may file reply briefs no later than thirty (30) days after the filing of briefs in
6 opposition.

7 Dated this 31st day of March, 2020

8 JEGLAW LTD

9
10 /s/ Jon E. Garde
11 JON ERIC GARDE
12 4455 S. Pecos Rd, Ste B
Las Vegas, NV 89121
Attorney for Plaintiff

NICHOLAS A. TRUTANICH
United States Attorney

/s/ Brian W. Irvin
BRIAN W. IRVIN
Assistant United States Attorney
Attorneys for the United States

13
14
15 IT IS SO ORDERED:

16
17
18 
19 UNITED STATES MAGISTRATE JUDGE
20 DATED: April 13, 2020